

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.18234 of 2020

B.Prabhakar

..Petitioner

. Vs.

1. Union of India

Represented by its Secretary
Ministry of Road Transports and Highways
New Delhi 110 001.
Email secy-road@nic.in

2. The Chairman

National Highways Authority of India
G5 and 6 Sector-10, Dwarka, New Delhi 110 075
Email chairman@nhai.org

3.The Project Director

Project Implementation Unit
National Highways Authority of India
Door No.212-3/D3-1,
Sri Nagar Colony, Narasodhipatty
Salem 636 004.

4. The Competent Authority cum Special DRO (LA),
National Highways No.7 47 and 46
Ex-Serviceman Welfare Building
1st Floor, Salem - Krishnagiri Districts
Krishnagiri 635 001.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to disburse the statutory entitlements namely 30% Solatium and 12 % Additional interest amount along with 15% interest till the date of payment on Rs.495 per Square feet , being the market value as of now accepted by the respondents, in pursuance of Award No. NH.No.47 Aa.Va.No.554/B2 dated 08.11.2012 passed by the Arbitral Tribunal Cum District Collector Salem in the light of the Judgement of the Honourable Supreme Court of India in the matter of UNION OF INDIA AND ANOTHER vs TARSEM SINGH AND OTHERS in Civil Appeal No. 7064 of 2019 for the petitioner's property land measuring an extent of 64 sq.mts of land in

S.No.47/1G2B of Annadhanapatty Revenue Village, Salem Corporation, Taluk and District acquired by the 4th respondent office in Award No.Roc.1299/2008(A2) dated 27.6.2008.

For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
for Mr.P.Sivakumar

For R 1 : Mr.G.Karthikeyan
Addl. Solicitor General

For RR 2 and 3 : Mr.Su.Srinivasan
Standing Counsel

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the respondents to disburse the statutory entitlements namely 30% solatium and 12% additional interest to the petitioner in line with the judgement of the Hon'ble Supreme Court in Tarsim Singh's case reported in (2019) 9 SCC 304.

2. The case of the petitioner is that the lands were acquired by the National Highways and subsequently the compensation was fixed and the inadequacy of compensation was taken up by way of arbitration proceedings before the District Collector. While the compensation was fixed, the petitioner was not paid the solatium at the rate of 30% as per Section 23 (2) of the Land Acquisition Act, 1894 (hereinafter called 'the Act') and the additional amount at the rate of 12 % was not paid as per Section 23 (1)(A) of the Act. This was due to the fact that Section 3-J of the National Highways Act, did not provide for the payment of compensation under these heads.

3. Ultimately the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh reported in (2019) 9 SCC 304, declared Section 3-J of the National highways Act, as unconstitutional and violative of Article 14 of the Constitution of India. In view of the same, the petitioner made a representation to the respondents requesting for the payment of solatium and additional amount with interest. Since the same was not considered, the present writ petition has been filed before this Court.

4. Heard Mr. ARL. Sundaresan, learned Senior Counsel appearing for the petitioner and Mr.G.Karthikeyan, learned Additional Solicitor General for R 1 and Mr.Su.Srinivasan, learned Standing Counsel appearing on behalf of respondents 2 and 3.

5. The issue involved in the present case was considered by this Court in W.P.No. 17302 of 2020. The relevant portions in the order are extracted:

6. It is further seen from records that the matter was ultimately decided by the Honourable Supreme Court in the case of Union of India and another vs. Tarsem Singh and others reported in 2019(9)SCC page 304. The Honourable Supreme Court in this judgment held that 3-J of the National Highways Act is unconstitutional and it is violative of Article 14 of the Constitution of India. The relevant finding of the Honourable Supreme Court at paragraph 52 of the judgment is extracted hereunder;

52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal arising out of SLP (C) No. 9599/2019 is dismissed.

7. Pursuant to the above judgment, the petitioner has made a representation to

the respondents seeking for the 30% solatium and also 12 % of additional amount. Since the same was not considered, the present Writ Petition has been filed before this Court.

8. The learned Addl. Govt. Pleader appearing on behalf of the 1st respondent and the learned Standing Counsel appearing on behalf of the 2nd respondent submitted that the judgment of the Honourable Supreme Court cannot reopen the awards that have already been passed and the petitioner cannot be permitted to claim for 30% solatium and 12% additional amount by taking advantage of the judgment of the Honourable Supreme Court which was passed much later in time.

9. In the considered view of this Court, the above submissions are not acceptable to this Court on two grounds. The first ground is that the petitioner specifically made a claim for 30% solatium and 12% of additional amount based on the judgment of the High Court and the same was rejected by the District Collector only on the ground that an appeal is pending before the Honourable Supreme Court. Now the Honourable Supreme Court has declared Section 3-J of the National Highways Act as unconstitutional. Therefore the claim made by the petitioner is revived by virtue of this judgment of the Honourable Supreme Court. The second ground is that where a provision has been declared to be unconstitutional by the High Court or by the Supreme Court, the same will have a retrospective effect and it will be deemed that such a provision was not available in the relevant enactment and it will be treated as non-est in the eye of law. That apart, judicial decisions will have retrospective operation unless and otherwise it is specified in the judgment itself that it will have only a prospective effect. Useful reference can be made to the judgment of the Honourable Supreme Court in the case of General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and others reported in (2009) 7 SCC 205 and also in the case of K.Madhava Reddy and others Vs. The State of Andhra Pradesh and others reported in 2014 6 SCC 537.

6. The above order will squarely apply to the facts of the present case also. In the considered view of this Court, the request made by the petitioner for payment of the solatium and additional amount with interest cannot be termed as re-opening a settled claim. It is not as if this claim was made by the petitioner and rejected on the merits of the case. The compensation was not paid under these heads since Section 3-J was in force and therefore the compensation could not have been granted under these heads. Therefore, the petitioner is entitled to claim compensation under these heads.

7. The learned Standing Counsel appearing on behalf of National Highways brought to the notice of this Court the earlier orders passed by this Court in W.P.No.9445 of 2020, dt.08.09.2020 and submitted that similar such request made in that writ petition was rejected by this Court. In the considered view of this Court, the facts of the case involved in the said order is completely different from the facts of the present case. That apart, even assuming that the earlier order gives an impression as if the solatium and additional amount cannot be claimed after the judgment of the Hon'ble Supreme Court in Tarsem Singh, such a view may not be correct and a Court which feels that an earlier view was wrong, need not bind itself with that view. As the Court gets wiser, it must correct its view wherever it finds that the earlier view was not in accordance with law.

8. In view of the above discussion, the representation made by the petitioner will have to be necessarily considered. The petitioner is directed to make a fresh representation before the District Collector, Salem along with all the relevant documents and a copy of this order. The District Collector on receipt on the representation shall issue notice to the petitioner as well as the National Highways Department. An enquiry shall be conducted and orders shall be passed within a period of four months from the date of the receipt of the representation from the petitioner.

9. This writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Secretary

Union of India
Ministry of Road Transports and Highways
New Delhi 110 001.
Email secy-road@nic.in

2. The Chairman

National Highways Authority of India
G5 and 6 Sector-10, Dwarka, New Delhi 110 075
Email chairman@nhai.org

3.The Project Director

Project Implementation Unit
National Highways Authority of India
Door No.212-3/D3-1,
Sri Nagar Colony, Narosodhipatty
Salem 636 004.

4.The Competent Authority cum Special DRO(LA),
National Highways No.7 47 and 46
Ex-Serviceman Welfare Building
1st Floor, Salem - Krishnagiri Districts
Krishnagiri 635 001.

5.The District Collector,
Salem.

+2cc to Mr.P.Sivakumar, Advocate SR.40859
+1cc to the Government Pleader SR.40715

W.P.No.18234 of 2020

EV(CO)
CB(11/01/2021)

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